



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

ENFORCEMENT AND
COMPLIANCE ASSURANCE
DIVISION

VIA ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

DECEMBER 11, 2020

IN THE MATTER OF: Tucson Iron & Metal

P.O. Box 28898
Tucson, AZ 8527-8898
gary@tucsoniron.net

ATTENTION: Tandy Kippur, President

Request for Information Under § 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a)

The United States Environmental Protection Agency ("EPA") is issuing this information request to determine the compliance status of Tucson Iron & Metal ("TIM"). EPA is requesting information to determine compliance with the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA" or "the Act"), at its facility located at 4484 East Tennessee Street in Tucson, Arizona. Specifically, TIM operates at this facility a contraband incinerator subject to the requirements of Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 8, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. These requirements are codified at 40 C.F.R. Part 60, Subpart EEEE (the "NSPS").

Under Section 114(a) of the CAA, the Administrator of EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with regulations promulgated under the CAA. The Administrator has delegated this authority to the undersigned Manager of Region 9's Air Enforcement Office, Enforcement and Compliance Assurance Division.

TIM is hereby required to provide EPA with information requested in Appendix C, within thirty (30) calendar days after receipt of this letter. In responding to this request, TIM shall use the instructions provided in Appendix A and provide the certification in Appendix B.

If TIM anticipates that it will not be able to respond fully to this request within the time period specified, TIM must submit a sworn declaration by a responsible corporate official within fifteen (15) calendar days after receipt of this information request specifying what information will be

provided by the allotted deadline, describing the efforts that have been or are being undertaken to obtain the remaining other responsive information, and providing a detailed schedule of when such other responsive information will be provided. Upon receipt and based upon such declaration, EPA may extend the time in which to respond to this information request.

EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, we will consider your specific circumstances in determining an appropriate timeline for responding to this request for information, while still ensuring that the Agency receives the information it needs to timely confirm your company's compliance with the CAA.

If TIM seeks to withhold any document(s) based on a claim of attorney-client communications privilege or the attorney work product doctrine in its response to this information request, TIM shall provide with its response a privilege log for each document containing the following information: (i) the date, author(s), every individual to whom the document was originally sent, every individual who subsequently acquired the document, the purpose for which the document was sent to or obtained by those individuals, and the employment titles of the authors and recipients; (ii) the subject matter of the document; (iii) the privilege claimed for the document and all facts supporting the claim of privilege; (iv) the primary purpose(s), including the business purposes, for which the document was made; (v) the question(s) in this information request to which the document is responsive; and (vi) all facts contained in the document that are responsive to a question in this information request.

The responsive information shall be accompanied by a cover letter sent in electronic form via email to Mark Sims at sims.mark@epa.gov or by a file transfer program ("FTP"). Upon request to sims.mark@epa.gov, EPA can provide a secure link to an FTP site in order to submit responses to this Information Request.

Please be advised that under Section 113(a) of the Act, 42 U.S.C. § 7413(a), failure to provide the information and documents required by this letter may result in an order requiring compliance, an order assessing an administrative penalty, or a civil action for appropriate relief. Section 113(b) of the Act, 42 U.S.C. § 7413(b), provides for the assessment of a civil penalty, which has been adjusted for inflation to not more than \$101,493 per day, for each violation of the Act. See 40 C.F.R. § 19.4 (for violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020). In addition, Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides criminal penalties for knowingly making any false material statement in, or omitting material information from, any report required under the Act.

You must submit all requested information under an authorized signature with the following certification (provided in Appendix B):

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including

the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You may assert a confidential business information (“CBI”) claim on behalf of TIM covering part or all of the information provided to EPA in response to this letter. Any such CBI claim must conform to the requirements set forth in 40 C.F.R. Part 2, particularly 40 C.F.R. § 2.203, and contain supporting documentary evidence. See also 41 Fed. Reg. 36,902, 36,907 (Sep. 1, 1976). In addition, any such claim must be substantiated in accordance with 40 C.F.R. § 2.204(e)(4).

Specify by page, paragraph and sentence when identifying information from a document where you make a CBI claim. Where your claim does not include all information on a page, please attach a copy of each such page with brackets around the text you claim to be CBI. If a page, document, or group or class of documents claimed by you to be CBI contains a significant amount of information which our Regional Counsel determines is not CBI, your CBI claim regarding that page, document, or group or class of documents may be denied.

You are advised that certain information may be made available to the public pursuant to Section 114(c) of the Act, 42 U.S.C. § 7414(c), and 40 C.F.R. § 2.301, notwithstanding a claim that such information is entitled to confidential treatment. Please note that emission data provided pursuant to Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. Emission data is defined at 40 C.F.R. § 2.301(a)(2). If no claim of confidentiality is received with your reply, the information may be made available to the public without notice to TIM.

We would also like to take this opportunity to advise you that TIM may qualify as a “small business” under the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”). Please review the enclosed SBREFA Information Sheet, which is designed to provide information on compliance assistance to entities that may qualify as small businesses as well as to inform them of their right to comment to the SBREFA Ombudsman concerning EPA’s enforcement activities. Please be aware that SBREFA does not eliminate TIM’s responsibility to respond in a timely fashion to any complaint or information request that EPA may issue or other enforcement action that EPA may take, nor does SBREFA create any new rights or defenses under the law other than the right to comment to the SBREFA Ombudsman.

This information request is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not the “collection of information” within the meaning of 44 U.S.C §§ 3502(3) and 3518(c)(1), since it is being issued during the conduct of an investigation involving the EPA against specific individuals or entities. See also 5 C.F.R. § 1320.4.

Any questions concerning this Information Request should be directed to Mark Sims at (415) 972-3965 or sims.mark@epa.gov or have your attorney contact Denise Leong in the Office of Regional Counsel at (415) 972-3409 or leong.denise@epa.gov.

ROSHNI
BRAHMBHATT

Digitally signed by
ROSHNI BRAHMBHATT
Date: 2020.12.11
15:17:28 -08'00'

Roshni Brahmbhatt, Manager
Air Enforcement Office
Enforcement and Compliance Assurance
Division
EPA Region 9 – San Francisco

Enclosures

cc: Rupesh Patel, Pima County Department of Environmental Quality (Via Email)

Appendix A

Instructions

1. Please provide a separate narrative to each request and subpart of each numbered paragraph in Appendix C of this Information Request.
2. Where requested, please submit electronic data or list information in Microsoft Excel, or similar format. You may also choose to submit documents requested in .pdf format. Prepare a cover letter that summarizes and references your responses provided and in addition, attach to the cover letter the signed certification by a corporate official with authority to make such representations, as provided in Appendix B and described in the body of the above information request letter.
3. If you have no information or documents responsive to a request, please so state in your response.
4. Where documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such documents or information.
5. To the extent that a document is responsive to more than one request, please so state and provide only one copy of the document.
6. Indicate for each document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a document is responsive to more than one request, this must be indicated and only one copy of the document needs to be provided.
7. For each document provided in response to this Information Request, provide an accurate and legible copy submitted electronically and clearly label to which request(s) the document is responsive.
8. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis of the number provided (e.g., estimated, measured, or engineering judgement).
9. All responsive documents other than Microsoft Excel format must be:
 - a. provided as an accurate and legible copy in a searchable PDF file format; and
 - b. submitted electronically by email or FTP site.

10. Documents claimed as confidential business information (“CBI”) must be submitted separately from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the CBI.
11. Certify that the attached files have been scanned for viruses and indicate what program was used.

Definitions

1. The term “**affiliated organization**” means any organization or entity associated with you as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization or entity acting in lieu of you.
2. The term “**entity**” means any natural person, corporation, partnership, Limited Liability Company, sole proprietorship, joint venture, or any formal or informal group, organization, or association.
3. The term “**information**” means any written, recorded, or graphic material of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, books, manuals, instructions, working papers, records, notes, letters, notices, confirmations, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (email), calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and work sheets.
4. The term “**information**” also includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “**information**” also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic or mechanical representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape, or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.
5. The terms “**you**,” “**your**,” “**Tucson Iron & Metal**,” and “**TIM**,” shall mean Tucson Iron and Metal and its affiliated organizations, and all agents, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, and contractors.

These terms shall also mean any others who are not listed above and are in possession, custody, or control (actual or constructive) of information relevant to this Information Request or information that is otherwise available to you, or who may have obtained information for or on behalf of TIM.

6. The term “**person**” includes an individual, corporation, partnership, or association (see Section 302(e) of the CAA, 42 U.S.C. § 7602(e)).
7. Section 111 of the Clean Air Act authorizes the EPA to develop technology-based standards which apply to specific categories of stationary sources. These standards are referred to as “**New Source Performance Standards**” (“NSPS”) and are found in 40 C.F.R. Part 60.
8. The term “**affected facility**” means, with reference to a stationary source, any apparatus to which an NSPS standard is applicable.
9. The term “**commenced**” means, with respect to the definition of new source in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.
10. The term “**construction**” means fabrication, erection, or installation of an affected facility.
11. The term “**modification**” means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which an NSPS standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which an NSPS standard applies) into the atmosphere not previously emitted.
12. All terms not defined in this enclosure have their ordinary meaning, unless such terms are defined in the Clean Air Act and/or its implementing regulations, and in which case the statutory and/or regulatory definitions apply. Words in singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular request. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this information request any information which might otherwise be construed to be outside its scope.

Appendix B

Statement of Certification

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Information Request, issued pursuant to Section 114(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by Tucson Iron & Metal to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

Appendix C

Information You Are Required to Submit to EPA

1. Provide the date for commencement of construction of the contraband incineration kiln and supporting documents such as construction contracts, installation permits, and/or operating permits.
2. If the contraband incineration kiln has been modified, provide the date(s) of the modification(s) and all supporting documents.
3. Provide the February 2005 Minor Permit Revision submitted to Pima County Department of Environmental Quality (“Pima County DEQ”).
4. For each continuous emission monitoring systems (“CEMS”) Relative Accuracy Test Audit (“RATA”) conducted from February 2017 to the present, state the date(s) the RATA was conducted and provide the RATA final test report(s).
5. For each CEMS RATA that TIM initiated from April 2019 to the present but did not complete or for which a final report was not prepared, state the date(s) TIM initiated the RATA(s) and provide all documentation showing the results of each RATA.
6. From April 2019 to the present, for each instance when the CEMS have been determined to be “Out of Control” following a RATA test (see 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 5.2), provide the following information:
 - a. Each date and time TIM determined the CEMS to be Out of Control (see 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 5.2);
 - b. State the corrective actions taken to address each Out of Control condition and provide supporting documentation;
 - c. For each RATA resulting in excessive audit inaccuracy (see 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 5.2.3) and showing the CEMS to be Out of Control, provide all the reports required by 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 5.2. that TIM submitted to Pima County DEQ and/or EPA;
 - d. For each subsequent audit that TIM performed following corrective action(s), provide the audit results;
 - e. Written Quality Control (“QC”) procedures as required by 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 3; and
 - f. For each Out of Control condition occurring in any two successive quarters (see 40 C.F.R. Part 60, Appendix F, Procedure 1, Section 5.3), provide the revised QC procedures or state the date(s) the CEMS were modified and/or replaced.

7. On December 11, 2019, Pima County DEQ Inspector Rogers conducted an inspection at the TIM facility. Inspector Rogers noted the following items observed during the inspection in his inspection report:
- a. The sorbent injection system was not in operation during incineration activity at the time of the inspection, as required by Section 3, Condition 52.b and Attachment 4, condition V.B of Pima County DEQ Class I Permit issued on March 26, 2018. Although advised to take corrective action, TIM personnel initiated no action to correct the lack of sorbent supply.
 - i) For the December 11, 2019 incineration activity, state the corrective action(s) taken by TIM personnel concerning the sorbent injection system, state the date and time sorbent was initially introduced to the incineration air pollution control equipment, and provide all supporting documentation.
 - ii) If no corrective action was taken, explain why and provide the date and time the sorbent was initially introduced to the incineration air pollution control equipment, and provide all supporting documentation.
 - b. For the December 11, 2019 incineration activity, provide the incinerator charge rate and contraband feed type, and provide all supporting documentation.
 - c. During the inspection, TIM facility personnel pointed out to Inspector Rogers several locations where the equipment experienced “previous storm damage.” For each location of storm damage, provide the following information:
 - i) State the specific nature of any storm damage;
 - ii) State the location of any storm damage and provide equipment diagrams and photographs (if available) showing the location of any of the storm damage;
 - iii) State the date(s) that TIM first observed any of the storm damage;
 - iv) State the date(s) that TIM 1) initiated and 2) completed each of the repairs of any storm damage;
 - v) Provide all documentation related to the repairs of any of the storm damage including, but not limited to, purchase orders or maintenance orders; and
 - vi) If any storm damage has not been repaired, provide the rationale why repair of the storm damage was not required for proper operation of the incinerator (e.g., cosmetic only).

- d. Provide the secondary combustion chamber (afterburner) temperature records for the duration of the incineration activity (from startup period to shutdown, as defined in 40 C.F.R. § 60.2977) conducted on December 11, 2019 as required by Section 3, Condition 52.c and Attachment 4, Section V.C of the Pima County DEQ Class I Permit issued on March 26, 2018.
8. Pima County DEQ issued TIM a Notice of Violation (“NOV”) dated July 22, 2020.
- a. Provide the comprehensive maintenance schedule of the Other Solid Waste Incinerator (“OSWI”) during the operation of equipment and during downtime.
 - b. Provide the maintenance and inspection records as specified in the procedures listed in page 6, Section E of the January 2018 OSWI Operation and Maintenance Plan (see alleged violation 2 requested corrective action in the July 22, 2020 NOV).
 - c. Provide the most recent OSWI Operation and Maintenance Plan.
9. For September 9-10, 2020 emissions testing, conducted by Bison Engineering Inc., provide the following OSWI parametric data for those days: 1) incinerator charge rate (reported in pounds per hour), 2) contraband feed type, and 3) sorbent feed rate (reported in pounds per hour).
10. Provide the operating parameter data, as specified in EPA’s letter dated September 27, 2016, for TIM’s most recent incineration activity, including: 1) incinerator charge rate, 2) incinerator secondary combustion chamber temperature data, 3) sorbent feed rate, 4) carbon monoxide and oxygen CEMS data and 5) contraband feed type.
11. Provide a schedule of anticipated incineration events from the date of this letter through December 31, 2021. If anticipated incineration is not scheduled that far in advance, state how far in advance anticipated incineration events are scheduled.
12. Provide the most recent contraband incineration contracts or agreements with U.S. Drug Enforcement Administration and U.S. Customs and Border Patrol.